

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #16	CCRB Case #: 201707745	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 08/21/2017 1:58 PM	Location of Incident: 41st Precinct stationhouse	Precinct: 41	18 Mo. SOL 2/21/2019	EO SOL 2/21/2019	
Date/Time CV Reported Tue, 09/12/2017 8:05 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/19/2017 12:28 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Diaz	18508	933743	041 PCT
2. POM Abel Dupres	13626	963498	041 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Efrain Ayala	00285	934314	041 PCT
2. SGT Gelvis Loraespinal	03358	948238	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Diaz	Abuse: Police Officer Anthony Diaz drew his gun.	
B.POM Anthony Diaz	Force: Police Officer Anthony Diaz used physical force against § 87(2)(b)	
C.POM Anthony Diaz	Force: Police Officer Anthony Diaz used physical force against § 87(2)(b)	
D.POM Anthony Diaz	Force: Police Officer Anthony Diaz restricted § 87(2)(b)'s breathing.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On September 12, 2017, § 87(2)(b) filed this complaint with IAB. The CCRB received this case on September 19, 2017.

On August 21, 2017, at approximately 1:58 p.m., § 87(2)(b) was standing outside of the 41st Precinct stationhouse when he saw PO Anthony Diaz and PO Efrain Ayala sitting inside their vehicle looking at him while PO Diaz waved his gun (**Allegation A: Abuse of Authority**, § 87(2)(g) PO Diaz, PO Ayala, and PO Abel Dupres subsequently approached and arrested § 87(2)(b). During the arrest, PO Diaz allegedly grabbed § 87(2)(b) by the chest of his shirt and pushed him against a door (**Allegation B: Physical Force**, § 87(2)(g) § 87(2)(b) also alleged that PO Diaz subsequently pulled him down to the ground, causing him to be positioned face-down on top of his bike (**Allegation D: Physical Force**, § 87(2)(g) PO Diaz allegedly applied pressure to § 87(2)(b)'s back, causing his breathing to be restricted (**Allegation D: Force**, § 87(2)(g) § 87(2)(b) was released with a disorderly conduct summons.

§ 87(4-b), § 87(2)(g)

There is no video footage capturing this incident. However, § 87(2)(b) provided a video recording he took of himself which depicts an injury he sustained on his right arm (Board Review 16).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Anthony Diaz drew his gun.

§ 87(2)(g)

§ 87(2)(b) stated that while he was standing in front of the 41st Precinct stationhouse he was observing a vehicle accident that occurred in front of the stationhouse and was also looking at various items outside the stationhouse (Board Review 01). As he was observing all of the aforementioned things, he noticed an officer in the driver seat, identified via the investigation as Ayala, and an officer in the front passenger seat, identified via the investigation as PO Diaz, looking at him as they were sitting inside a marked police vehicle. As the vehicle made a turn, PO Diaz waved his gun by moving his gun up and down while the gun was pointed in the direction of the windshield. § 87(2)(b) described the color of the gun as black. § 87(2)(b)'s CCRB phone statements were consistent with the information he provided during his CCRB interview (Board Review 01 and 21).

The investigation identified PO Diaz as the subject officer because he closely resembles the physical description § 87(2)(b) provided and by the officers' testimonies that PO Diaz would have been in the front passenger seat.

PO Diaz denied waving his firearm or any objects towards § 87(2)(b) and denied having his firearm in his hand while he was inside the police vehicle (Board Review 04).

PO Ayala and PO Dupres also denied seeing PO Diaz wave his gun toward § 87(2)(b) and denied seeing PO Diaz with his gun out while inside the police vehicle (Board Review 03 and 07).

§ 87(2)(g)

Allegation (B) Physical Force: Police Officer Anthony Diaz used physical force against

§ 87(2)(b)

Allegation (C) Physical Force: Police Officer Anthony Diaz used physical force against

§ 87(2)(b)

§ 87(2)(g)

In his CCRB testimony, § 87(2)(b) stated that after he saw PO Diaz wave his gun, he turned around and walked into the 41st Precinct stationhouse to alert officers that PO Diaz had been waving his weapon (Board Review 01). Upon entering the first set of doors, § 87(2)(b) heard the officers yelling, “Hey!” In response, § 87(2)(b) stopped. Three officers, identified via the investigation as PO Diaz, PO Ayala, and PO Dupres, subsequently entered through the door and PO Diaz grabbed § 87(2)(b) by the chest of his shirt with both hands and pushed § 87(2)(b) against the door. § 87(2)(b)'s hands were holding onto his bike when PO Diaz grabbed him. PO Diaz subsequently turned § 87(2)(b) around while pulling him down to the ground with both hands grabbing him by the front of his shirt. On the ground, § 87(2)(b) was positioned chest-first against the frame of his bike. PO Diaz twisted § 87(2)(b)'s right arm by placing both of his arms behind his back with his elbows pointed away from his body in a handcuffing position. § 87(2)(b) denied ever pulling his arms away or striking any officers. § 87(2)(b) was placed in handcuffs while on the ground. § 87(2)(b) stated that he sustained lacerations to this hand and back from PO Diaz's nails digging into his skin during the handcuffing incident and a sprain to his right elbow. During § 87(2)(b)'s initial CCRB phone statements he alleged that he was thrown on the ground without providing additional details of this action (Board Review 21).



2018-02-07_9-38-41.mp4

§ 87(2)(b) provided a video clip, which he stated was recorded possibly on August 22, 2017, depicting the injury on his right arm. A photo of the injury § 87(2)(b) sustained on his right hand was also taken during his CCRB interview (Board Review 16).

In their CCRB interviews, PO Diaz and PO Ayala both stated that they had observed § 87(2)(b) approach two or three pedestrians in a manner that made the pedestrians uncomfortable (Board Review 03 and 04). PO Diaz and PO Ayala stated that one of the individuals who § 87(2)(b) approached looked over at them and looked as if he was questioning what was going on or had a facial expression similar to someone asking, “Seriously?”

PO Diaz and PO Ayala subsequently saw § 87(2)(b) look towards their vehicle and make a hand gesture similar to shooting a gun.

PO Diaz and PO Ayala both stated that only the two of them approached § 87(2)(b) during the incident. However, the Roll Call indicated that PO Diaz, Ayala, and PO Dupres were assigned to Sector D1 (Board Review 12). In PO Dupres' CCRB testimony, PO Dupres affirmed that he was working with PO Diaz and PO Ayala and was inside the vehicle with the two officers when he first observed § 87(2)(b) (Board Review 07). PO Dupres did not say that he observed § 87(2)(b) approaching anyone, but like PO Diaz and PO Ayala, he also saw § 87(2)(b) make a gesture with his hand imitating a gun.

In his initial CCRB testimony, PO Diaz stated that § 87(2)(b) was by the first couple of steps by the stationhouse as he was walked an unrecalled number of steps towards the stationhouse when he and PO Ayala approached him (Board Review 04). PO Diaz asked § 87(2)(b) what he was doing and in response, § 87(2)(b) became irate and cursed at PO Diaz by telling PO Diaz, "Go fuck yourself." § 87(2)(b) had one hand on his bicycle and was moving his other hand around in front of him in a circular motion. § 87(2)(b) subsequently walked an unrecalled number of steps closer towards PO Diaz while continuing to move his hand in a circular motion. At this point, PO Diaz determined that § 87(2)(b) was going to be placed under arrest for disorderly conduct. When § 87(2)(b) was face-to-face with PO Diaz, approximately two feet away, PO Diaz grabbed § 87(2)(b)'s hand. After grabbing § 87(2)(b)'s hand, § 87(2)(b) pulled his arm backwards and broke free of PO Diaz's grip. In response, PO Diaz told § 87(2)(b) to turn around once, but § 87(2)(b) did not do so. PO Diaz grabbed both of § 87(2)(b)'s arms. Upon PO Diaz grabbing both of § 87(2)(b)'s arms, § 87(2)(b) went down on one knee. PO Diaz did not know what caused § 87(2)(b) to go down on one knee and denied pulling § 87(2)(b) down to the ground. After § 87(2)(b) was on one knee, PO Ayala assisted by grabbing one of § 87(2)(b)'s arms. PO Diaz was then able to place § 87(2)(b)'s hands behind his back and handcuff him. PO Diaz stated that § 87(2)(b) was never in a position where he was laying chest-down on the ground. Aside from what he already mentioned, PO Diaz denied using any additional physical force aside from restraining § 87(2)(b)'s arms. PO Diaz stated that no additional officers assisted with placing § 87(2)(b) in handcuffs. During his second CCRB interview, PO Diaz denied pushing § 87(2)(b) against a door or a wall or taking him down to the ground (Board Review 08).

PO Ayala's and PO Dupres' CCRB statements were consistent with PO Diaz's account in regards to § 87(2)(b)'s demeanor when they first approached § 87(2)(b). PO Ayala stated that once he and PO Diaz approached § 87(2)(b), PO Ayala told § 87(2)(b) to place his hands behind his back approximately five times, but § 87(2)(b) verbally refused to do so (Board Review 03). PO Ayala subsequently went to grab his hands as he and § 87(2)(b) were facing each other. In response, § 87(2)(b) pulled away. PO Ayala and PO Diaz both subsequently attempted to grab § 87(2)(b)'s hands and a struggle ensued. § 87(2)(b) tucked his hands and flailed his hands in the air by moving his arms in circles by the side of his body. PO Ayala and PO Diaz were eventually able to grab § 87(2)(b)'s hands and PO Ayala placed one arm behind his back. § 87(2)(b) kneeled down on the ground causing all three to fall to the ground. Once § 87(2)(b) bent down with his knees on the ground, PO

Ayala and PO Diaz were able to handcuff him by grabbing both of his hands and rear handcuffing him. Aside from his knees, PO Ayala did not recall any other part of § 87(2)(b)'s body making contact with the ground. PO Ayala denied pulling § 87(2)(b) down to the ground and did not see PO Diaz doing so. PO Ayala also denied seeing PO Diaz push § 87(2)(b) against a door.

PO Dupres provided a slightly different account from PO Diaz and PO Ayala's statements (Board Review 07). PO Dupres stated that after PO Diaz told § 87(2)(b) to put his hands behind his back twice, PO Diaz turned § 87(2)(b) around so that his back was facing PO Diaz. PO Diaz was only making contact with § 87(2)(b)'s arm at this point. As PO Diaz was holding § 87(2)(b)'s arms, PO Diaz placed the handcuffs on his hands. PO Dupres stated that § 87(2)(b) resisted by moving his arms back and forth, shaking his body, and bringing his body weight straight down. PO Diaz overcame § 87(2)(b)'s resistance by grabbing § 87(2)(b)'s right arm, turning him around, and placing handcuffs on § 87(2)(b). PO Dupres denied seeing PO Diaz do anything else to place § 87(2)(b) in handcuffs. PO Dupres denied seeing PO Diaz push § 87(2)(b) against a wall or door. After § 87(2)(b) was handcuffed, PO Dupres saw § 87(2)(b) bring his own body weight down to the ground. As he did this, PO Diaz was holding § 87(2)(b)'s arm. PO Dupres denied seeing PO Diaz pulling § 87(2)(b) towards the ground. While on the ground, § 87(2)(b)'s chest was against the ground. § 87(2)(b) was on the ground for approximately 10 seconds before officers lifted him up from the ground.

In his CCRB statement, Sgt. Loraespinal stated that while he was at the desk he heard people arguing by the stationhouse door, but he was only able to see two uniformed officers, identified via the investigation as PO Diaz and PO Ayala, by the area (Board Review 05). Sgt. Loraespinal immediately went towards the PO Diaz and PO Ayala and saw them place § 87(2)(b)'s arms behind his back in an attempt to handcuff him. § 87(2)(b) resisted by refusing to put his hands behind his back, moving his hands around, and screaming. Sgt. Loraespinal did not recall how § 87(2)(b) was positioned, whether he was standing or on the ground. Sgt. Loraespinal did not see the officers doing anything else besides place § 87(2)(b)'s hands behind his back. From what he observed, PO Diaz and PO Ayala were successfully able to handcuff § 87(2)(b) by overpowering him by grabbing his arms and placing them behind his back. Sgt. Loraespinal stated that he saw the front of § 87(2)(b)'s body leaning against the wall when he was handcuffed, with his legs bent and his knees not touching the ground. Sgt. Loraespinal did not see how § 87(2)(b) came to be against the wall. Sgt. Loraespinal denied seeing any officers push § 87(2)(b) against the wall. Sgt. Loraespinal did not know if § 87(2)(b) ever came to be on the ground and he did not recall if he saw any officers pull § 87(2)(b) to the ground.

None of the officers saw any injuries on § 87(2)(b) during the incident (Board Review 03, 04, 05, and 07). However, PO Diaz and PO Ayala both recalled § 87(2)(b) complaining of pain to his arm after he was handcuffed (Board Review 03 and 04). EMS was called, but upon their arrival, § 87(2)(b) refused medical attention.

In the 41st Precinct Command Log, Sgt. Loraespinal wrote that § 87(2)(b) sustained a hand injury (Board Review 13). During his CCRB interview, Sgt. Loraespinal did not recall making that notation and denied seeing any injuries on § 87(2)(b).

In the Threat Resistance and Injury report, which documents whenever officers use force, prepared by PO Diaz, it was noted that a forcible take down was used, but there was no notation of the reason force was used (Board Review 11). During his second CCRB interview, PO Diaz explained that the forcible take down was in reference to § 87(2)(b) being handcuffed and that § 87(2)(b) had one knee on the ground (Board Review 08). He stated that this notation of force used was not in reference to anything else. Additionally, he stated that he did not know why there was no notation of why force was used, but clarified that what is noted in this section of the TRI report is accurate and that there were no additional reasons for why force was used aside from § 87(2)(b) not following commands to place his hands behind his back.

§ 87(2)(b) was issued a § 87(2)(b) summons as a result of this incident (Board Review 10). § 87(2)(b), § 87(2)(a) 160.50

On § 87(2)(b), § 87(2)(b) was arrested for assault at the location of § 87(2)(b), in the Bronx (42nd Precinct stationhouse) under similar circumstances to what the officers observed during this incident (Board Review 14). In the arrest report, it was noted that § 87(2)(b) was yelling at the victim for no reason, causing annoyance, and then punched her in the face.

A document request to the 41st Precinct stationhouse for the Medical Treatment of Prisoner form was returned with a notation that the document was not on file at the 41st Precinct.

§ 87(2)(b)'s discharge papers for his visit to § 87(2)(b) indicate that he was diagnosed with a sprain to his right elbow (Privileged Documents). The investigation was unable to obtain § 87(2)(b)'s medical records to confirm the extent of his injuries and any statements he made in regards to how he sustained the injuries.

All of the officers stated that they did not see PO Diaz using any additional force other than grabbing § 87(2)(b)'s arms and placing them behind his back. PO Diaz also denied using any additional force. Contrary to what is noted in the TRI report prepared by PO Diaz, in his CCRB testimony, PO Diaz denied taking § 87(2)(b) down to the ground. Moreover, all of the officers, besides Sgt. Loraespinal, provided consistent accounts in regards to seeing some part of § 87(2)(b)'s making contact with the ground. However, only PO Dupres stated that he saw § 87(2)(b) place himself chest down on the ground after he had been placed in handcuffs.

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Force: Police Officer Anthony Diaz restricted § 87(2)(b)'s breathing.

§ 87(2)(b) alleged that while he was face-down on the ground lying on top of his bike, PO Diaz placed his hands behind his back and placed him in handcuffs (Board Review 01). As he was being placed in handcuffs, PO Diaz applied pressure towards an unknown area of § 87(2)(b) back, pushing his chest against the frame of his bike in a manner that restricted his breathing. § 87(2)(b) could not further describe this action. § 87(2)(b) assumed that it was PO Diaz who restricted his breathing because he did not recall PO Ayala or PO Dupres doing anything during the handcuffing process. In response, § 87(2)(b) told the officers that he could not breathe more than once. He did not recall if any of the officers said anything in response. During a follow up call, § 87(2)(b) did not know how long his breathing was restricted and he could not tell how long PO Diaz applied the pressure for (Board Review 02). Moreover, § 87(2)(b) stated that he was on the ground for approximately one or two minutes before he was stood up. § 87(2)(b)'s initial CCRB phone statements were consistent with his sworn CCRB testimony (Board Review 01 and 21).

Aside from Sgt. Loraespinal, none of the officers interviewed stated that they heard § 87(2)(b) complain that he could not breathe as he was being placed in handcuffs (Board Review 03, 04, 05, and 07). Additionally, all of the officers denied seeing PO Diaz applying pressure to § 87(2)(b)'s back or otherwise restrict his breathing.

In his CCRB testimony, PO Diaz stated that § 87(2)(b) was never lying on his chest (Board Review 04). Additionally, PO Diaz did not recall whether § 87(2)(b) was ever positioned on top of his bike. PO Diaz denied doing anything to restrict § 87(2)(b)'s breathing. PO Diaz stated that aside from grabbing § 87(2)(b)'s arms, he used no additional physical force against § 87(2)(b).

In his CCRB testimony, PO Ayala stated that aside from seeing his knees, he did not see any other part of § 87(2)(b)'s body making contact with the ground (Board Review 03). PO Ayala also denied seeing § 87(2)(b) lying on the ground or on top of his bike. PO Ayala stated that aside from him and PO Diaz, he did not see any additional officers assist with handcuffing § 87(2)(b).

§ 87(2)(g) PO Dupres stated that after § 87(2)(b) was placed in handcuffs he saw § 87(2)(b) lying chest-down on the ground for approximately 10 seconds before PO Diaz and PO Ayala lifted him up from the ground (Board Review 07). PO Dupres stated that § 87(2)(b) dropped his own body down to the ground.

In his CCRB statement, Sgt. Loraespinal stated that he did not know if § 87(2)(b) was ever on the ground and did not recall if he was lying on top of his bike (Board Review 05). Sgt. Loraespinal stated that he heard § 87(2)(b) complain that he could not breathe as he was being escorted to the front desk in handcuffs. Sgt. Loraespinal denied hearing § 87(2)(b) make this complaint prior to this. Sgt. Loraespinal stated that one or two officers were holding

onto § 87(2)(b)'s arm when he made this complaint; he denied seeing any of the officers making any additional physical contact with § 87(2)(b)

Sgt. Loraespinal's account in regards to § 87(2)(b)'s complaint that his breathing was restricted was not corroborated by any of the officers or by § 87(2)(b). Additionally, Sgt. Loraespinal only saw one or two officers holding § 87(2)(b)'s arm when he heard him make this complaint.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 17).
- PO Diaz has been a member of the NYPD for 14 years and has had four prior CCRB complaints in two cases. None of his previous allegations were substantiated and § 87(2)(g)
- PO Dupres has been a member of the NYPD for less than a year and has had no prior CCRB complaints pleaded against him.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation during his CCRB interview.
- As of November 21, 2017, § 87(2)(b) has not filed a Notice of Claim in regards to this incident (Board Review 18).
- § 87(2)(b), § 87(2)(c)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date